

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ROW VAUGHN WELLS, INDIVIDUALLY)
AND AS ADMINISTRATRIX OF THE)
ESTATE OF TYRE DEANDRE NICHOLS,)
DECEASED,)

Plaintiffs,)

v.)

CASE NO. 2:23-CV-02224
JURY DEMAND

THE CITY OF MEMPHIS, A)
MUNICIPALITY; CHIEF CERELYN DAVIS,)
IN HER OFFICIAL CAPACITY; EMMITT)
MARTIN III, IN HIS INDIVIDUAL)
CAPACITY; DEMETRIUS HALEY, IN HIS)
INDIVIDUAL CAPACITY; JUSTIN SMITH,)
IN HIS INDIVIDUAL CAPACITY;)
DESMOND MILLS, JR. IN HIS INDIVIDUAL)
CAPACITY; TADARRIUS BEAN, IN HIS)
INDIVIDUAL CAPACITY; PRESTON)
HEMPHILL, IN HIS INDIVIDUAL)
CAPACITY; ROBERT LONG, IN HIS)
INDIVIDUAL CAPACITY; JAMICHAEL)
SANDRIDGE, IN HIS INDIVIDUAL)
CAPACITY; MICHELLE WHITAKER, IN)
HER INDIVIDUAL CAPACITY; DEWAYNE)
SMITH, IN HIS INDIVIDUAL CAPACITY)
AND AS AGENT OF THE CITY OF)
MEMPHIS,)

Defendants.)

JOINT MOTION TO MODIFY THE SECOND AMENDED SCHEDULING ORDER

Defendants the City of Memphis (“the City”), Chief Cerelyn Davis in her Official Capacity (“Chief Davis”), and DeWayne Smith as Agent of the City of Memphis (“Lt. Smith”) (collectively, “the City Defendants”), together with Plaintiff (collectively, the “Parties”), by and through undersigned counsel, hereby move this Court to modify the controlling Scheduling

Order in this matter, and to enter a Third Amended Scheduling Order. In support of this Motion, the Parties state as follows:

1. Plaintiff filed her Complaint in this action on April 19, 2023. (ECF No. 1.)
2. This Court entered the original Scheduling Order on September 21, 2023. (ECF No. 111.) On January 23, 2024, upon an unopposed motion by Plaintiff, this Court entered a First Amended Scheduling Order (“Amended Scheduling Order”). (ECF No. 151.) On April 26, 2024, upon a second unopposed motion by Plaintiff, this Court entered a Second Amended Scheduling Order (“Second Amended Scheduling Order”). (ECF No. 185.)
3. Pursuant to the Second Amended Scheduling Order, the operative final deadlines for this matter are as follows:

COMPLETING ALL DISCOVERY: August 30, 2024

- (a) **DOCUMENT PRODUCTION AND INTERROGATORIES:** July 2, 2024
- (b) **DEPOSITIONS:** August 30, 2024
- (c) **REQUESTS FOR ADMISSIONS:** July 2, 2024

EXPERT WITNESS DISCLOSURE PURSUANT TO FED. R. CIV. P. 26(A)(2):

- (a) **DISCLOSURE OF PLAINTIFF’S (OR PARTY WITH BURDEN OF PROOF) RULE 26(A)(2) EXPERT INFORMATION:** September 2, 2024
- (b) **DISCLOSURE OF DEFENDANT’S (OR OPPOSING PARTY) RULE 26(A)(2) EXPERT INFORMATION:** October 1, 2024
- (c) **EXPERT WITNESS DEPOSITIONS:** November 1, 2024

MOTIONS TO EXCLUDE EXPERTS/DAUBERT MOTIONS: December 2, 2024

SUPPLEMENTATION UNDER RULE 26(E)(1): October 4, 2024

FILING DISPOSITIVE MOTIONS: October 28, 2024

JOINT PROPOSED PRETRIAL ORDER DUE: March 7, 2025

PRETRIAL CONFERENCE DATE: March 14, 2025

JURY TRIAL: March 24, 2025

4. On March 14, 2024, Plaintiff filed a Motion for Leave (1) to Take a Maximum of Thirty-Five Depositions; and (2) to Conduct Certain Depositions over the Permitted Seven (7) Hours. (ECF No. 163.) After a hearing on the issue, Magistrate Judge Christoff entered an Order on April 10, 2024, granting in part and denying in part Plaintiff's motion for leave. (ECF No. 179.) The Order permits Plaintiff to take thirty fact witness depositions.

5. In addition, the parties have reached a resolution as to the City's Rule 30(b)(6) deposition witnesses. Based on the topics set forth by Plaintiff, the City has designated six individuals to provide testimony, and the testimony is anticipated to take up to eight days.

6. Thus, in total, Plaintiff alone intends to take 36 depositions in this matter.

7. Moreover, the City intends to take 7-10 fact witness depositions in this matter.

8. The parties have made every effort to schedule all depositions in conformance with the previous Scheduling Order. However, due to counsels' conflicting trial schedules, out of state travel, and other scheduling impediments attendant with aligning the schedules of all parties, Plaintiff has conducted six of her allotted thirty fact witness depositions as of the filing of this Joint Motion. Six additional fact witness depositions and one of the six 30(b)(6) witness depositions are scheduled to take place by August 30, 2024.

9. The Parties have conferred in good faith to schedule the depositions on dates available for all counsel by the current fact discovery deadline, August 30, 2024. To illustrate, while making scheduling decisions, the Parties were able to agree upon two shortened depositions on a particular day for several witnesses in an effort to meet the deadline set in the Second Amended Scheduling Order.

10. However, given the number of parties to this case and the varying schedules of the witnesses and all counsel, the Parties have been unable to successfully schedule all depositions on or before August 30, 2024.

11. Also pending before this Court are the criminal cases of five of the defendants named in this lawsuit. (*See generally U.S. v. Emmitt Martin III, et al.*, Case No. 2:23-cr-20191-MSN, Indictment, ECF No. 2 (W.D. Tenn. Sept. 12, 2023)). Specifically, former officers Desmond Mills, Jr., Emmitt Martin III, Tadarrius Bean, Demetrius Haley, and Justin Smith (collectively, “Criminal Defendants”) have all been indicted and are defendants in a federal criminal case arising from the same underlying incident that is the subject matter of this litigation. (*See id.*)

12. The trial in the criminal cases was initially set to begin May 6, 2024.

13. On September 21, 2023, this Court ordered a complete stay of the civil litigation against the Criminal Defendants. (ECF No. 110.)

14. On February 8, 2024, this Court reset the criminal trial of the Criminal Defendants to September 9, 2024. (*See U.S. v. Emmitt Martin III, et al.*, Case No. 2:23-cr-20191-MSN, Notice of Re-setting, ECF No. 191 (W.D. Tenn. Feb. 8, 2024)). Thus, the criminal trial in the Western District of Tennessee, involving the Criminal Defendants was pushed back approximately eighteen weeks, or about four months. (*See id.*)

15. It appears from filings in the criminal cases that the criminal trial is expected to last somewhere between eight to fifteen days. (*See U.S. v. Emmitt Martin III, et al.*, Case No. 2:23-cr-20191-MSN, Criminal Scheduling Order, ECF. No. 51, PageID 148, at ¶ 1 (W.D. Tenn. Sept. 21, 2023); *U.S. v. Emmitt Martin III, et al.*, Case No. 2:23-cr-20191-MSN, Emmitt Martin Proposed Pretrial Scheduling Order, ECF. No. 194-1, PageID 2420 (W.D. Tenn. Feb. 16, 2024)). Further, in the event some, or all, of the Criminal Defendants are found guilty, sentencing could take

additional weeks. Thus, the federal criminal cases may not be fully resolved until sometime in late fall or early winter of 2024, and may possibly take longer.¹

16. The Parties state that good cause exists to extend the deadlines in the case due to the Parties scheduling concerns.

17. This Motion is made in good faith and in the interest of judicial economy.

18. This is the second motion to extend dates in the Scheduling Order.

19. The Parties propose the following modified dates:

COMPLETING ALL DISCOVERY: December 30, 2024

(a) **DOCUMENT PRODUCTION AND INTERROGATORIES:** November 1, 2024

(b) **DEPOSITIONS:** December 30, 2024

(c) **REQUESTS FOR ADMISSIONS:** November 1, 2024

EXPERT WITNESS DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(2):

(a) **DISCLOSURE OF PLAINTIFF'S (OR PARTY WITH BURDEN OF PROOF) RULE 26(a)(2) EXPERT INFORMATION:** January 20, 2025

(b) **DISCLOSURE OF DEFENDANT'S (OR OPPOSING PARTY) RULE 26(a)(2) EXPERT INFORMATION:** February 17, 2025

(c) **EXPERT WITNESS DEPOSITIONS:** March 17, 2025

MOTIONS TO EXCLUDE EXPERTS/DAUBERT MOTIONS: April 18, 2025

SUPPLEMENTATION UNDER RULE 26(e)(1): January 30, 2025

FILING DISPOSITIVE MOTIONS: April 4, 2025

RESPONSES TO DISPOSITIVE MOTIONS: May 2, 2025

¹ While not addressed in this Motion, the City Defendants point out that the state court criminal case has been “indefinitely postponed,” as of March 8, 2024. Adrian Sainz, *Memphis Judge Postpones State Trial in Tyre Nichols Death Until End of Federal Trial*, ASSOCIATED PRESS (March 8, 2024, 11:28 AM), <https://apnews.com/article/tyre-nichols-memphis-police-fatal-beating-37d8394ca0aad20795547d165b60e7a8>. This postponement lasts “until after the conclusion of a federal court trial on civil rights violations.” *Id.*

REPLIES TO DISPOSITIVE MOTIONS: May 16, 2025

JOINT PROPOSED PRETRIAL ORDER DUE: TBD

PRETRIAL CONFERENCE DATE: TBD

JURY TRIAL: TBD, approximately Summer 2025. Trial is anticipated to last approximately 15 days.

Based on the foregoing, the City Defendants and Plaintiff respectfully request that this Court grant this Motion for Modified Scheduling Order and enter a Third Amended Scheduling Order in this case, consistent with the dates proposed above.

Dated: July 18, 2024

Respectfully submitted,

ROMANUCCI & BLANDIN, LLC

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Estate of Tyre Deandre Nichols, deceased*

CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a)(1)(B), the undersigned hereby certifies that on July 10 and July 18, 2024, counsel for the City, Jennie Silk, consulted with all parties, via email. The parties were asked to respond if they opposed the Joint Motion or any of the proposed new deadlines. A chart detailing the parties'² responses is below:

Party	Responding Counsel	Opposition?
Plaintiff	N/A	No – Joining in Motion
Long	Darrell O'Neal	No
Hemphill	Betsy McKinney	No
D. Smith	Betsy McKinney	No
Whitaker	Jarrett Spence	No
Sandridge	Laura Smittick	No

s/ Bruce A. McMullen

Bruce A. McMullen

CERTIFICATE OF SERVICE

I, Bruce McMullen, hereby certify that on July 18, 2024, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, and that upon filing, such system will serve a copy of the foregoing upon all counsel of record in this action.

s/ Bruce A. McMullen

Bruce A. McMullen

² The case is stayed against Defendants Haley, Bean, Emmitt Martin III, Mills, Jr., and J. Smith. Accordingly, only one of the stayed-Defendants' attorneys responded to counsel's request for consultation. Stephen Leffler, counsel for Defendant Haley, does not oppose the motion.